

MEMORANDUM OPINION AND ORDER

Plaintiff, ANR Pipeline Co., filed this action for condemnation of certain easements for the construction of a natural gas pipeline pursuant to a Certificate of Public Convenience and Necessity ("CPCN") issued by the Federal Energy Regulatory Commission ("FERC") under the Natural Gas Act, 15 U.S.C. § 717 *et seq.* The court confirmed plaintiff's authority to condemn these easements and referred the matter to a commission for just compensation determinations. *See* Fed. R. Civ. P. 71A. Plaintiff moves for possession for construction asserting that it has been ordered by FERC to have the pipeline in service by November 4, 2004, and must begin final surveys by March 1, 2004 and construction by April 1, 2004. Richard Kirchner and Diane Kirchner, owners of some of the land being condemned, oppose the motion for possession asserting violation of the Constitution's Fifth Amendment takings provision and inadequacy of the bond to be posted. These objections are meritless.

The Fifth Amendment bars takings without just compensation. The court has already confirmed the authority to condemn this property and a commission has been appointed to determine just compensation. There is no requirement that the compensation be paid before possession is taken only that a reasonable and adequate provision for obtaining compensation after the taking exists. *See Cherokee Nation v. Southern Kansas Ry. Co.*, 135 U.S. 641, 659 (1890); *Estate of Himelstein v. City of Fort Wayne*, 898 F.2d 573, 576 (7th Cir. 1990). The commission satisfies that requirement.

The Kirchners also claim the bond offered by plaintiff is inadequate. They attach to their response a letter purporting to value certain trees on their property at \$109,020.00 and assert that the proposed bond of \$90,000 for all the properties condemned is too small. The declarations of Kevin Zarem and Gary Charette supplied by plaintiff support the bond offered by plaintiff based on the preliminary work done for the appraisals. These declarations support a valuation of 25% of fee value for the permanent easement and a \$700 per acre rental rate for the temporary easements. Kirchner's have not presented any declarations or other evidence to refute this calculation method. They only submit unsworn exhibits indicating their property is in a conservation district and an opinion on the value of certain trees. At this stage, the plaintiff's evidence is sufficient to support the bond offered. The Kirchner's have not challenged plaintiff's claim that it has no adequate remedy at law, that it will be irreparably harmed if it does not obtain possession now, that it has some likelihood of success on the merits, that the balance of harms favors plaintiff and that the public interest favors immediate possession.

Plaintiff's motion for possession for construction is granted.